PROTOCOL

FOR THE POLICE HANDLING

OF SEXUAL ASSAULT COMPLAINANTS

Final Paper

Amended and Approved by

MANITOBA POLICE COMMISSION

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OBJECTIVES OF THE PROTOCOL

A. To increase the reporting of sexual assault offences.

B. To increase the apprehension of assailants.

C. To ensure the successful prosecution of a maximum percentage of sexual assault cases.

D. To minimise the trauma of sexual assault complaints throughout the investigative process.

E. To enhance the confidence of the public in general and of sexual assault complainants in particular in the police handling of sexual assault cases.

F. To provide for a coordinated approach in the handling of sexual assault cases by the police and by community sponsored victim assistance programmes.

DEVELOPMENT OF SEXUAL ASSAULT GUIDELINES

All municipal police departments in Manitoba are to develop guidelines for the handling of sexual assault victims based on this protocol as soon as it is practical to do so and are to send a copy of the guidelines to the Manitoba Police Commission.

SEXUAL ASSAULT TRAUMA

1. Sexual Assault Trauma:

   (a) A number of emotions are experienced by the sexual assault complainant - primarily fear, but also anger, revenge, shame, guilt, embarrassment, helplessness, anxiety, powerlessness, humiliation; these may cause the complainant to appear confused, disoriented, and to exhibit severe mood changes. Other negative effects may well be felt as a result of a destructive attack on the complainant's sense of personal worth.

   (b) One complainant may display a surge of anger followed by guilt or self-blame (expressed response); whereas another may show no emotion whatsoever, appearing casual, even smiling or giggling (controlled response). Cases may be quite different.

   (c) These emotions are a part of a condition termed Sexual Assault Trauma, requiring long-term treatment. However, the initial approach to the complainant and the manner in which his/her needs are attended to will do much to restore some of the complainant's emotional balance.

   (d) It is essential that every officer involved in the investigation of sexual assaults be trained in the identification and understanding of Sexual Assault Trauma and take every step during the investigation to minimise its effects on the complainant.

   (e) Proper approach to these cases by police and prosecutors will increase the complainant's ability to recover from the trauma, facilitate the investigation and prosecution of the case, and result in complainants being more willing to report these offences, communicate comfortably with law enforcement personnel, and remain involved with the criminal

process to completion. Therefore an important part of the role of the police is to provide to the complainant support and knowledge about the criminal justice system throughout the investigative process.

TRAINING

2. All police officers are to receive as a part of police academy training and during refresher training, specialised instruction in the proper preliminary investigation of sexual assault cases, including:

   (a) interview techniques;

   (b) crisis intervention;

   (c) forensic evidence collection;

   (d) sensitization to the needs of the complainant:

   (e) Sexual Assault Trauma;

   (f) recognition of any personal biases about the crime and about complainants, and the means of overcoming those biases;

   (g) presentation by personnel from local community sexual assault support services to explain their role and function.

3. Detectives assigned to sexual assault complaints are to receive refresher training in all aspects of sexual assault investigative techniques including training in greater depth in:

   (a) interview techniques;

   (b) crisis intervention;

   (c) forensic evidence collection;

   (d) sensitization to the needs of the complainant;

   (e) Sexual Assault Trauma;

(f) recognition of personal biases about the crime and about complainants, and the means of overcoming those biases;

(g) presentation by personnel from local community sexual assault support services to explain their role and function.

4. Police forces devising in-house training and retraining for sexual assault investigators will utilise professionals and resource persons (medical doctors, psychologists, rape crisis workers, former victims, Crown Attorneys, etc.) from the community.

5. Where the size of the force does not warrant in-house training, arrangements are to be made for sexual assault investigators to attend training sessions in a sexual assault training programme of a major police department or equivalent facility acceptable to the Chief of Police.

INVESTIGATION

6. The investigating officer must provide a positive, supportive presence when dealing with the complainant.

7. The investigator is to be sensitive to the feelings of the complainant. When taking a statement, investigators should use clinical language if understood by the complainant; investigators are to preface embarrassing or sensitive questions with an explanation as to why the information is required.

8. In interviewing a complainant, an investigator is to keep in mind that Sexual Assault Trauma may have the following consequences, among others:

(a) it may manifest itself in surprising and unexpected ways, and the complainant may show no signs of physical injury;

(b) because of fear, embarrassment, etc., the complainant may not report the crime, or may delay doing so for some time, or until located by the police;

(c) a complainant interviewed right after the incident may be unable to relate events fully and accurately;

no inference is to be drawn from these circumstances that the complaint was not valid, or doubt expressed at the complainant's account of what occurred.

9. The main concern of the attending officer (and subsequent investigators) is to be for the emotional and physical needs of the complainant. Taking that into account, initial questioning should be limited to obtaining the minimum requirements of the incident report. This will include the request that where available, detectives specialising in sexual assault investigations will attend at the scene to take over the case at the earliest opportunity.

10. A female officer is to be summoned if one is available and it is practical to do so.

11. The attending officer is to briefly describe to the complainant:

(a) the necessity for a medical examination;

(b) the need for and type of further police investigation;

(c) the availability of sexual assault support services.

12. No later than immediately after the preliminary interview, an officer is to arrange for a medical examination of the complainant and to have him/her transported to a hospital or otherwise to ensure his/her medical needs are met forthwith.

13. The department is to ensure an informational brochure is provided to the complainant regarding sexual assaults and sexual assault support services at the earliest opportunity whether or not charges are laid.

14. The attending officer should offer to call a friend, relative or sexual assault crisis worker to attend to the complainant throughout the remaining initial investigation.

15. More detailed questioning is to take place following the medical examination of the complainant, at the earliest possible opportunity.

16. Investigating officers must assess and take into account the complainant's emotional state and needs, and determine if it is more appropriate to wait a period of time to meet those immediate needs before any formal statement is taken (for example, she may wish a meal, a short rest, a shower and a change of clothing etc.)

17. Where possible the further questioning of the complainant is to take place in privacy and in a comfortable setting. Except in exceptional circumstances, suspect interrogation rooms should not be used.

18. Investigators are to allow the complainant to describe the assault without questioning her credibility, and are to preface embarrassing or sensitive questions with an explanation as to why the information is required. Before taking a signed statement from the complainant, the investigator is to clearly explain that accuracy is essential.

19. Investigating officers are to confine questions about sexual activity, including previous sexual activity, to those relevant to medical examination or for clarification of information on the current complaint only. (See also Section 246.6(1 CC)

20. If any further interviewing is required, the investigator should make clear to the complainant that the objective is to ensure accuracy. The complainant is not to be routinely cross-examined, although independently verified conflicting facts may be put to him/her with a view to obtaining his/her explanation or response.

21. With the complainant's knowledge and consent, investigators may tape record or videotape the interview to minimise the number of times that a complainant may have to repeat the details of his/her assault during the investigative process.

22. The investigating officer should inquire whether the complainant wishes to have another person present throughout the questioning. If so, the investigator will advise such a person that his/her function is to support the complainant without interfering with the police investigation. The investigator will have the ultimate discretion to exclude that person should he/she interfere with the questioning or should other problems arise. In that event, the reason for the exclusion should be communicated to the complainant.

SEXUAL ASSAULT TEAM

23. Where the size of a police force warrants it, the Chief of Police is to explore the development of sexual assault teams to handle the investigation of all reported cases of sexual assault, and take the necessary action when warranted.

24. Where the size of the force does not warrant the development of sexual assault teams, experienced detectives with specialised training in dealing with sexual assault cases are to be assigned to the investigation of sexual assault cases.

25. Where a sexual assault team or a team of detectives does not include a female, the investigating officer should inquire whether the complainant would prefer to have a female officer present at the interview. If so, and where practical and one is available, the wishes of the complainant are to be accommodated.

POLYGRAPHS

26. Polygraph testing of sexual assault victims is not acceptable; however, if the evidence revealed following a thorough investigation substantially conflicts with the facts related by the complainant, the test may be given as a last resort.

27. The polygraph must never be used as a threat or inducement. An investigating officer should never suggest to a complainant that the polygraph will be used, unless he/she intends to use it. A complainant cannot be asked to submit to a polygraph examination until same has been authorised in writing by the Chief of Police or his/her designate and after the Crown Attorneys' office has reviewed the evidence and determined that polygraph testing is warranted.

28. The polygraph procedure must be thoroughly explained to the complainant prior to any examination. The complainant is to be provided with an informational brochure re the polygraph test where one is available, together with a sample consent form at least twenty-four hours prior to the test.

29. If a complainant refuses to undergo polygraph testing, no inference of untruthfulness is to be drawn from that refusal alone.

30. A polygraph test may only be administered by a trained polygraph specialist who has also received specialised training re sexual assault cases, including the effects of Sexual Assault Trauma.

31. A polygraph test must not be administered on someone who is medically unfit (for example, suffers from high blood pressure, heart disease, is pregnant or is suffering from Sexual Assault Trauma).

32. If the polygraphist has any reason to believe a complainant is experiencing Sexual Assault Trauma, the polygraph test must not be administered until a psychiatrist or psychologist assesses the complainant and deems that he/she is not experiencing Sexual Assault Trauma and that he/she is psychologically fit.

33. After the polygraph examination is over, the results of the examination are to be reviewed with the complainant based on the interpretation of the examination questions, polygrams, case facts and type of offence.

UNFOUNDED COMPLAINTS

34. The police department must review all sexual assault complaints deemed "unfounded" by investigators and the investigation is not to be closed until the Chief of Police or his/her designate has reviewed the evidence and concurred that the complaint is "unfounded". If the complainant disputes the finding, the department is to have the file reviewed by Crown Counsel for advice.

FOLLOW-UP SERVICES FOR SEXUAL ASSAULT COMPLAINANTS

35. Police departments are to cooperate with community service agencies and make referrals to these agencies in order that the complainant receives the appropriate follow-up services for information, counselling and assistance.

36. Investigating officers are to provide advice to complainants on where they will obtain information on all aspects of the judicial process, including: the Victim Witness Assistance Programme of the Attorney General's Department (phone 1-800-282-8069 toll free); or the Department's Victim Services Unit if there is one; or through the officers themselves in cooperation with Crown Counsel.

37. Investigating officers are to keep the victim informed of significant developments of the case.

38. If the complainant requests, the investigating officer is to advise him/her that a procedure does exist for a private prosecution, and that the victim should obtain legal advice on how to proceed with that avenue.

AFFIRMATIVE ACTION PROGRAMMES

39. Police departments are to comply with municipal affirmative action or equivalent programmes to attract female recruits and to encourage female officers to apply for promotion to

detective status. If there are no such municipal programmes, police departments should develop their own.